IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 7638 of 2007(S)

OA.195/2005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:
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1. THE DIVISIONAL PERSONNEL OFFICER,
SOUTH WESTERN RAILWAY,MYSORE DIVISION,
MYSORE.

2. UNION OF INDIA, REPRESENTED BY THE
GENERAL MANAGER, SOUTH WESTERN RAILWAY,
HUBILI,DHARWAR DISTRICT,KARNATAKA.

3. THE CHIEF ADMINISTRATIVE OFFICER,
SOUTHERN RAILWAY/CONSTRUCTION,
EGMORE,CHENNAI-8.

4. THE CHIEF ENGINEER,
METROPOLITAN TRANSPORT PROJECT,
EGMORE,CHENNAI-8.

5. THE SENIOR DIVISIONL FINANCIAL MANAGER,
SOUTH WESTERN RIALWAY, MYSORE DIVISION,
MYSORE.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT:

T.P.VENKATESWARAN, RETIRED SENIOR
CLERK (ADHOC), METROPOLITAN TRANSPORT PROJECT,
(RAILWAYS), CHENNAI,(RESIDING AT NO.24/2,
THONDIKULAM VILLAGE, NOORANI POST,
PALAKKAD-678 004.

BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NO.7638 OF 2007

Dated this the 20th day of March, 2007.

JUDGMENT

Koshy, J.

This Writ Petition is filed challenging Ext.P4 order of Central Administrative Tribunal. Respondent is a retired Senior Clerk. He entered service as a Gangman on 12.4.1978 and joined Construction Organisation as Lascar on 30.3.1983 and promoted on ad-hoc basis as Junior Clerk on 10.4.1985 and was promoted as Senior Clerk on 30.07.1990 again on ad-hoc basis and retired on 30.06.2004. He was given all the benefits and cash payments of un-utilised leave on the salary scale Rs.4500-7000/-. However when the pension was calculated, the petitioner took a stand that he was originally posted as Gangman and for the purpose of retirement benefits, notional salary has to be calculated considering what would have been his salary after due promotion if he continued in the parent post. It is also stated that he was on deputation for more than 23 years and ad-hoc promotion cannot be granted for more than 3 - 4 months as per 216 of IREM. The fact remains that he was in the post on ad-hoc basis for more than two decades and at this distance of time it is not possible for the department to ignore the same. According to the petitioner he should not have been promoted on ad-hoc basis for more than 4 to 6 months and his promotion itself was wrong and his salary is to be fixed for calculation of

pensionary benefits on the basis of the notional pay fixed in the parent post. He was working for 23 years in deputation basis and he is entitled to gratuity and other benefits based on the salary actually paid to him. Of course, if petitioner was given promotion on ad-hoc basis, illegally for more than 6 months, it is for the railway to take action on officers, who are responsible for the same. But after allowing a person to continue in the post for 23 years and extracting work and paying salary according to the work done, cannot be denied due pension, on the basis of the last drawn salary. We agree with the order of the Central Administrative Tribunal. In any event there is no illegality or irregularity or perverse finding warranting interference under Article 227 of Constitution of India.

The Writ Petition is dismissed.

J.B.KOSHY, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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